

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

ARTURO BANGUERRA-DIAZ §  
VS. § CIVIL ACTION NO. 1:08cv147  
UNITED STATES MARSHALS SERVICE, §  
ET AL.

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Arturo Banguerra-Diaz, an inmate at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought the above-styled action.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this action be dismissed as frivolous and for failing to state a claim upon which relief may be granted. The magistrate judge's recommendation was based on his findings that the plaintiff had not sued the proper party and that the claims were barred by the applicable two-year statute of limitations.

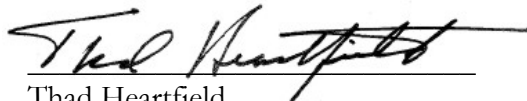
The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff claims he speaks very little English and he believed alleged promises made by the Department of Justice that his wheelchair and personal property would be returned to him. However, plaintiff has shown neither that rare and exceptional circumstances existed preventing him from filing his action earlier nor that he diligently pursued his claims such as to potentially warrant equitable tolling.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

**SIGNED** this the **6** day of **June, 2008**.

  
Thad Heartfield  
United States District Judge